IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PHILIP LOUIS WAYNE FLOOR, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11373 Trial Court No. 3AN-10-9793 CR MEMORANDUM OPINION No. 6198 — July 1, 2015

Appeal from the Superior Court, Third Judicial District, Anchorage, Jack Smith, Judge.

Appearances: Susan Orlansky, Susan Orlansky LLC, and Gavin Kentch, Law Office of Gavin Kentch, LLC, Anchorage, for the Appellant. Jason Gist, Assistant District Attorney, Anchorage, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Kossler, Judges.

PER CURIAM.

In August 2010, Philip Louis Wayne Floor, Carl Leedom, and a third friend attacked and killed Harvey Albright Jr. Leedom administered the fatal blow to Albright, hitting him in the forehead with the butt of a handgun. Floor, Leedom, and a fourth man transported Albright's body from Eagle River to Palmer, where they partially buried the body in a wooded area. They also burned Albright's clothes and some of his

possessions. The State charged Floor with second-degree murder under the theory that he participated in the assault and was vicariously liable for Leedom's actions under AS 11.16.110(2). A jury convicted Floor of the lesser-included offense of manslaughter and two counts of tampering with evidence.[1] On appeal, Floor contends that his conviction for manslaughter is not supported by sufficient evidence. Floor argues that the evidence did not prove that he was aware that Leedom would kill Albright by hitting him on the head with the handgun.

To convict Floor of manslaughter under a vicarious liability theory, the State had to prove that Floor acted with the intent to promote or facilitate Leedom's assault on Albright, and the State had to prove that Floor was reckless as to the possibility that this assault would result in Albright's death.[2] The evidence is sufficient to support a conviction if reasonable jurors could find the defendant's guilt established beyond a reasonable doubt.[3] In reviewing a sufficiency of the evidence claim, we view the evidence in the light most favorable to the jury's verdict.[4] We therefore recite the evidence in that light.

According to the testimony at trial, Albright and Albright's girlfriend stole Carl Leedom's backpack because they knew that Leedom kept drugs and a significant amount of money in the backpack. Based on his belief that Albright had stolen his backpack, Leedom recruited Floor and another man to help him retaliate against Albright. Their plan was to knock Albright unconscious, restrain him, and take him somewhere to "scare the shit out of him." Floor "expected to kick some ass."

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[1] AS 11.41.120(a)(1); AS 11.56.610(a)(1).

[2] *See Riley v. State*, 60 P.3d 204, 206-21 (Alaska App. 2002); *see also Grossman v. State*, 120 P.3d 1085, 1087-88 (Alaska App. 2005).

[3] *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009).

[4] *Johnson v. State*, 188 P.3d 700, 702 (Alaska App. 2008).

The three men approached Albright as he was asleep on a couch. Floor was wearing a red cloth over his lower face and gloves on his hands. Floor, who had aspired to be a professional fighter, tried to knock Albright unconscious by repeatedly punching him in the head. But Albright awoke and started fighting back. With Floor holding Albright down, Leedom — who was wearing gloves with plastic knuckles — punched Albright several times. Leedom next hit Albright in the forehead with the butt of his handgun, knocking Albright out.

Floor provided duct tape and zip ties, which the group used to restrain Albright. Meanwhile, the men realized that Albright was not breathing. Instead of obtaining medical care for him, they bound Albright in a blanket, put him in Floor's truck, and drove him to Palmer. With the assistance of a fourth person, Floor and Leedom partially buried Albright's body and burned some of his clothes and the blanket. A later autopsy showed that Albright died from the injury to his head caused by the butt of the handgun.

This evidence, and the reasonable inferences to be drawn from it, was sufficient to support the jury's verdict of manslaughter. A jury could reasonably conclude that Floor voluntarily and actively participated in the assault on Albright with conscious disregard of a substantial and unjustifiable risk that the assault would result in Albright's death.[5] We therefore affirm Floor's conviction for manslaughter.

Floor also contends that the superior court erred by rejecting his proposed mitigating factor. Floor argued that mitigating factor AS 12.55.155(d)(11) applied to his case. This factor is available when the defendant establishes by clear and convincing evidence that he "assisted authorities to detect, apprehend, or prosecute other persons

[5] *See Riley*, 60 P.3d at 207, 221; *Grossman*, 120 P.3d at 1087-88; *see also* AS 11.81.900(a)(3) (defining "recklessly").

who committed an offense."[6] Superior Court Judge Jack Smith rejected the factor, and he also found that even if Floor had established the factor, he would not have given it any weight.

Because the sentencing judge expressly declared that even if Floor had proved the proposed mitigating factor, he would not have adjusted Floor's sentence based on this factor, we conclude that Floor's argument that the superior court erred in rejecting the factor is moot.[7]

We AFFIRM the judgment of the superior court.

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[6] AS 12.55.155(d)(11).

[7] *See Tice v. State*, 199 P.3d 1175, 1177 (Alaska App. 2008) (declining to rule on applicability of aggravating factor where sentencing judge expressed intent to sentence defendant to same composite term regardless of the factor's existence).